

The following Section, ' 11B-33A, derived from 2002 L.M.C., ch. 17, is not effective until July 1, 2003. However, inasmuch as it applies to proposals invited after January 1, 2003, it is being codified in advance of the effective date.

Sec. 11B-33A. Wage requirements.

- (a) *Scope.* Any contract for procurement of services by a County department or office must require the contractor and any subcontractor to comply with the wage requirements of this Section. As used in this Section, “covered employer” refers to any contractor or subcontractor that is subject to this Section.
- (b) *Exceptions to coverage.* This Section does not apply to:
 - (1) a contractor who:
 - (A) employs fewer than 10 employees when the contractor submits a bid or proposal, and
 - (B) does not employ 10 or more employees at any time the contract is in effect as a result of performing the contract;
 - (2) a contractor who, at the time a contract is signed:
 - (A) has received less than \$50,000 from the County in the most recent 12-month period; and
 - (B) will be entitled to receive less than \$50,000 from the County under that contract in the next 12-month period;
 - (3) a contract with a public entity;
 - (4) a contract with a nonprofit organization that has qualified for an exemption from federal income taxes under Section 501(c)(3) of the Internal Revenue Code;
 - (5) a non-competitive contract awarded under Section 11B-14 if the Chief Administrative Officer finds that the performance of the contract would be significantly impaired if the wage requirements of this Section applied;
 - (6) a contract for electricity, telephone, cable television, water, sewer, or similar service delivered by a regulated public utility;
 - (7) a contract for services needed immediately to prevent or respond to an imminent threat to public health or safety;
 - (8) an employer to the extent that the employer is expressly precluded from complying with this Section by the terms of any federal or state law, contract, or grant;
 - (9) a bridge contract entered into under Section 11B-42; or
 - (10) a contract entered into under a cooperative procurement under Section 11B-40.

The Executive by regulation may increase the amount in subsection (b)(2) to reflect increases in the cost of living.

(c) *Solicitation requirements.*

- (1) Each bid or proposal to provide services to the County must specify how the contractor and each subcontractor will comply with these wage requirements, and must include sufficient funds to meet these requirements.
- (2) Each bid or proposal to provide services to the County which is submitted by an organization that is exempt from coverage under subsection (b)(4) must specify the wage the organization intends to pay to those employees who will perform direct, measurable work under the contract, and any health insurance the organization intends to provide to those employees. In evaluating the cost of a bid or proposal the County must disregard any additional cost attributable to payment of the wage requirements of this Section by any organization that is exempt from coverage under subsection (b)(4) when compared to a bid or proposal submitted by another organization that is also exempt from coverage under subsection (b)(4).
- (3) A contractor must not split or subdivide a contract, pay an employee through a third party, or treat an employee as a subcontractor or independent contractor, to avoid the imposition of any requirement under this Section.

(d) *Health insurance.* If a contractor or subcontractor commits in its bid or proposal to provide health insurance to any employee who provides services to the County, the contractor or subcontractor may:

- (1) certify in its bid or proposal the per-employee hourly cost of the employer=s share of the premium for that insurance, and
- (2) reduce the wage paid under subsection (e) to any employee covered by the insurance by all or part of the per-employee hourly cost of the employer=s share of the premium.

- (e) *Wage requirement.*
 - (1) Except as permitted under subsection (d)(2), each covered employer must pay each employee who is not exempt under subsection (f) at least \$10.50 per hour during the time the employee actually provides services to the County.
 - (2) The Chief Administrative Officer must adjust the wage rate required under this subsection, effective July 1 of each year, by the annual average increase, if any, in the Consumer Price Index for all urban consumers for the Washington-Baltimore metropolitan area, or any successor index, for the previous calendar year. The Chief Administrative Officer must calculate the adjustment to the nearest multiple of 5 cents, and must publish the amount of this adjustment not later than March 1 of each year. Each adjustment under this paragraph applies to any contract covered by this Section which:
 - (A) is in effect when the adjustment takes effect, or
 - (B) takes effect during the next 12 months.
- (f) *Exceptions to wage requirement.* The wage requirements of this Section do not apply to any employee:
 - (1) who performs no measurable work related to any contract with the County;
 - (2) who participates in a government-operated or -sponsored program that restricts the earnings of or wages paid to employees to a level below the wage required under this Section;
 - (3) who participates for no longer than 120 days in any calendar year in a government-operated or -sponsored summer youth employment program; or
 - (4) for whom a lower wage rate is expressly set in a bona fide collective bargaining agreement.
- (g) *Conflicting requirements.* If any federal, state, or County law or regulation requires payment of a higher wage, that law or regulation controls. If any applicable collective bargaining agreement requires payment of a higher wage, that agreement controls.
- (h) *Enforcement.*
 - (1) The Chief Administrative Officer must require each covered employer to:
 - (A) certify that the employer and each subcontractor is aware of and will comply with the applicable wage requirements of this Section;
 - (B) keep and submit any records necessary to show compliance; and
 - (C) conspicuously post notices informing employees of the requirements of this

Section, and send a copy of each such notice to the Chief Administrative Officer=s designee.

- (2) The Chief Administrative Officer must enforce this Section, perform random audits and any other audit necessary to do so, and investigate any complaint of a violation.
- (3) An employer must not discharge or otherwise retaliate against an employee for asserting any right under this Section or filing a complaint of violation. Any retaliation is subject to all sanctions for noncompliance with this Section.
- (4) The sanctions of Section 11B-33(b) which apply to noncompliance with nondiscrimination requirements apply with equal force and scope to noncompliance with the wage requirements of this Section.
- (5) Each contract may specify that liquidated damages for any noncompliance with this Section includes the amount of any unpaid wages, with interest, and that the contractor is jointly and severally liable for any noncompliance by a subcontractor. In addition, each contract must specify that an aggrieved employee, as a third-party beneficiary, may by civil action enforce the payment of wages due under this Section and recover any unpaid wages with interest, a reasonable attorney=s fee, and damages for any retaliation for asserting any right under this Section.

(i) *Report.*

The Chief Administrative Officer must report annually to the Council and Executive on the operation of and compliance with this Section. In addition, the report filed under Section 11B-61(a) each year must compute the number of contracts and subcontracts with minority-owned businesses that are subject to the requirements of this Section, and how that number has changed since the year before those requirements took effect. (2002 L.M.C., ch. 17, '1.)

Editor's noteC2002 L.M.C., ch. 17, '2, states: Section 11B-33A, inserted by Section 1 of this Act, applies, effective July 1, 2003, to any contract for which the County government released a solicitation on or after January 1, 2003, and to any renewal or extension of a previously-effective contract which takes effect on or after July 1, 2003, and incorporates any material alteration to a provision of that contract. The Chief Administrative Officer must offer to renegotiate any multi-year contract which took effect before July 1, 2003, if the contractor agrees to apply the wage requirements of Section 11B-33A to employees who provide services under that contract. The first annual wage adjustment required by Section 11B-33A(e)(2) must take effect on July 1, 2004.